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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,265	11/03/2003	Steven W. Minneman	MTM 045 P2	3695
34232	7590	07/26/2005	EXAMINER	
MATTHEW R. JENKINS, ESQ. 2310 FAR HILLS BUILDING DAYTON, OH 45419			CLEMENT, MICHELLE RENEE	
			ART UNIT	PAPER NUMBER
			3641	

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/700,265

Applicant(s)

MINNEMAN, STEVEN W.

Examiner

Michelle (Shelley) Clement

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection as necessitated by applicant's amendment.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "point of contact" is unclear, and the specification does not define what is meant by "point of contact". Point of contact with what? It appears to the examiner that any structure would have any number of points of contacts depending on what was contacting. For instance, the plurality of supports each comprise an infinite support point of contacts with the air if the device is in the open.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3, 4, 8, 10, 14, 17, 19, 20, 24, 26, 30, and 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Reinfried et al. (US Patent # 4,971,208). Reinfried et al. discloses a gun rest comprising a front base (reference 20) comprising a front fork and a first

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plurality of supports (references 24 & 26) separated by a first support distance, a rear base (reference 22) comprising a rear fork and a second plurality of supports (references 28 & 30) separated by a second support distance and a coupler clamp for securing said front base to the rear base, the coupler permitting the front base and the rear base to pivot relative to each other so that the first plurality of supports and the second plurality of supports can lie in different planes. The second support distance being less than the first support distance (it is noted that the supports are clamps which pivot about a pivot point, therefore the support distance is variable and depends on the size of clamps used and the firearm supported. The device as disclosed by Reinfried et al. is inherently capable of having the second support distance being less than the first support distance.) The first and second plurality of supports each comprise at least one support point of contact and the gun rest is supported by at least four points of contact. The device may be made of plastic (i.e. polymer) (column 5, lines 52-60). The rear base comprises a member that is received in the front base so that it can be detached from the front base. The rear base comprises a tubular member (reference 32) that is received in an area of the front base and can telescope in and out of the front base. The first plurality of supports lie in a first plane and the second plurality of supports lie in a second plane, the first and second planes being generally perpendicular to an axis of the gun rest--the first plane can be the same as the second plane or the first and second planes can be different. At least one of the front and rear forks is adjustable. The front base comprises a planar area (reference 34) for providing a handgun support.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 5-7, 11, 13, 15, 18, 21, 22, 23, 27-29 and 31 are rejected under 35

U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Reinfried et al. as applied to claims 1, 4, 17, and 20 above. With respect to the product-by-process claims, it is noted that determination of patentability is based on the product itself and the patentability of a product does not depend on its method of production. Therefore, although Reinfried et al. does not expressly disclose the device produced by the method of molding a polymer or the device comprising the method of molding a handle, it is the patentability of the product claimed and not of the recited process. Reinfried et al. discloses the device may be made of plastic (i.e. polymer) (column 5, lines 52-60). It is further noted that any portion of the device may be utilized as a handle.

8. Claims 9, 12, 16, 25, 28, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinfried et al. as applied to claims 1, 7, 17, and 23 above. Reinfried et al. discloses the claimed invention except for the device weighing less than about 5 pounds and the specific support distances. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device lightweight (i.e. less than 5 pounds) and the first support distances at least 18 inches and the second support distance at least 5.6 inches, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "M. Clement", is located in the lower right quadrant of the page.